

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

LOCAL UNION 513 HEALTH AND	)	
WELFARE FUND, et al,	)	
	)	
Plaintiffs,	)	Cause Number: 4:18-cv-01279 SNLJ
v.	)	
	)	
PETRY EXCAVATING, LLC,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER ON PLAINTIFFS’  
MOTION FOR DEFAULT ORDER TO COMPEL AN ACCOUNTING**

This matter is before the Court on Plaintiffs’ motion for default judgment against **Petry Excavating, LLC** (hereinafter, “**Petry**”). Plaintiffs are the union and the trustees, sponsors and/or fiduciaries of the various funds.

Plaintiffs filed this action on **August 1, 2018** under the Employee Retirement Security Act, 29 U.S.C. §§ 1132 and 1145, and the Labor Management Relations Act, 29 U.S.C. § 185. The Complaint alleges **Petry** failed to make accounting and fully pay several employee benefit funds and contributions due under the collective bargaining agreement between **Petry** and its employees’ union.

The Clerk of Court entered an order of default against the Defendants on **November 28, 2018**. [Doc. #5].

Plaintiffs have filed a motion seeking an accounting under the trust documents, collective bargaining agreement and common law under ERISA. Plaintiffs also seek known damages resulting from a breach of a settlement agreement between the parties.

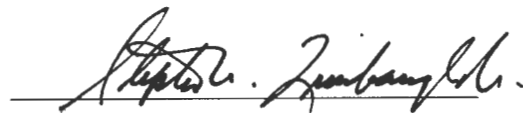
When the Clerk of Court has entered default against a defendant, the “allegations of the complaint except as to the amount of damages are taken as true.” Mueller v. Jones, No. 2:08CV16 JCH, 2009 WL 500837, at \*1 n.2 (E.D. Mo. Feb. 27, 2009) (quoting Brown v. Kenron Aluminum & Glass Corp., 477 F.2d 526, 531 (8th Cir. 1973)). Accordingly, in deciding the present motion for Default Judgment, the Court accepts as true the factual allegations contained in the Plaintiffs’ Complaint together with those affidavits presented in the Plaintiffs’ motion and memorandum in support as they relate to the Plaintiffs’ damages and prayer for relief.

Based on those allegations and affidavits, plaintiffs are entitled to the relief requested.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiffs’ motion for partial default judgment is **GRANTED**. **Petry** shall submit the documents requested for the period **July 2016** to the date of this Order to Plaintiffs’ attorney within ten (10) days of this Memorandum and Order. Failure to comply with this Order may result in the imposition of sanctions. Plaintiffs are granted leave in order to provide additional proof of attorney’s fees and costs incurred in this matter.

*Dated this 19<sup>th</sup> day of Dec., 2018.*

A handwritten signature in black ink, appearing to read "Stephen J. Zumbach", is written over a horizontal line.